

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 30701

EDWARD POWELL,	)	
	)	2005 Opinion No. 20
Plaintiff-Respondent,	)	
	)	Filed: March 24, 2005
v.	)	
	)	Stephen W. Kenyon, Clerk
KATHLEEN POWELL,	)	
	)	
Defendant-Appellant.	)	
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Blaine County. Hon. James J. May, District Judge. Hon. Robert J. Elgee, Magistrate.

Order of the district, on appeal from the magistrate division, affirming allocation of costs following writ of execution, affirmed in part, reversed in part, and remanded.

Kathleen Powell, Boise, pro se appellant.

Edward Powell, Nampa, pro se respondent.

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PERRY, Chief Judge

Kathleen Powell appeals from the district court's order, affirming the order of the magistrate, which allocated the costs following a writ of execution to her. Kathleen also challenges the district court's failure to address her motion to impose sanctions against Edward Powell in the intermediate appeal. We affirm in part, reverse in part, and remand.

I.

FACTS AND PROCEDURE

Edward holds a small claims judgment in his favor against Kathleen for approximately \$1300, which was entered in April 2002. In March 2003, Edward applied for a writ of execution, seeking satisfaction of the judgment. On April 30, the sheriff seized Kathleen's 1989 Jeep Cherokee pursuant to the writ and placed it in storage. The following day, Kathleen claimed that she was entitled to an exemption on her vehicle, as set forth in I.C. § 11-605(3), because it was worth less than \$3,000. Edward filed a motion contesting the claim of exemption

on May 7, asserting that the vehicle was worth more than the statutory exemption. Kathleen contended that, because her vehicle was exempt, she was entitled to reimbursement for alternative transportation which she incurred while her vehicle was in storage, and that Edward should bear the costs of the levy on her vehicle. A hearing was held on May 19 to determine whether the vehicle was exempt.

At the time of the hearing, Kathleen's vehicle had been in storage for twenty days. The sheriff's fees included \$90 for towing and \$20 per day for storage, for a total of \$490. Edward stated that he thought Kathleen's vehicle might be worth \$3950 and was, therefore, worth more than the amount of the exemption. The magistrate explained to Edward that, if the vehicle were sold, Kathleen would be entitled to reimbursement of \$3000 and that the sheriff's costs associated with the vehicle's levy and execution would be paid out of the sale proceeds. Thus, in order for Edward to collect toward his judgment, the vehicle would need to sell for more than the amount of the exemption and execution costs. Edward indicated that he did not want to go forward with the sale. The magistrate found that the seizure was not made in bad faith and that the vehicle, being worth less than the statutory exemption, was exempt. Kathleen argued that she did not make the error of seizing her vehicle and should not be held responsible for costs associated with its levy. The magistrate ordered that the vehicle be released and that Edward pay the sheriff's fees, but also ordered that the full amount of sheriff's fees be added to the judgment against Kathleen so that Edward could have "the chance of chasing" Kathleen for reimbursement of those fees.

Kathleen appealed to the district court, arguing that the magistrate erred by finding that the levy was made in good faith, by failing to consider her request for alternative transportation costs, and by ordering the costs of execution be added onto the judgment. The district court affirmed the order of the magistrate, holding that it was bound by the magistrate's factual determinations and that it appeared that the magistrate correctly applied the law. Kathleen again appeals.

## **II.**

### **ANALYSIS**

On review of a decision of the district court, rendered in its appellate capacity, we examine the record of the trial court independently of, but with due regard for, the district court's

intermediate appellate decision. *Hentges v. Hentges*, 115 Idaho 192, 194, 765 P.2d 1094, 1096 (Ct. App. 1988).

**A. Good Faith Finding**

Kathleen asserts that the magistrate's finding that Edward did not seize her vehicle in bad faith was in error. This Court will not disturb a trial court's findings of fact unless they are clearly erroneous. *Erickson v. Flynn*, 138 Idaho 430, 434, 64 P.3d 959, 963 (Ct. App. 2002). In determining whether a finding is clearly erroneous, this Court does not weigh the evidence as did the trial court. *In re Williamson*, 135 Idaho 452, 454, 19 P.3d 766, 768 (2001); *Erickson*, 138 Idaho at 434, 64 P.3d at 963. Instead, this Court inquires only whether the findings are supported by substantial and competent evidence. *Williamson*, 135 Idaho at 454, 19 P.3d at 768; *Erickson*, 138 Idaho at 434, 64 P.3d at 963. The trial court has the special opportunity to judge the credibility of witnesses who appear personally before it. *Muniz v. Schrader*, 115 Idaho 497, 500, 767 P.2d 1272, 1275 (Ct. App. 1989). Where evidence is conflicting, it is the role of the trial court to weigh such evidence. *Id.* As an appellate court, this Court is precluded from substituting our own opinion regarding witnesses' credibility for that of the trial court. *Id.*

In the instant matter, the magistrate was presented with conflicting testimony regarding whether the vehicle's seizure was made in good faith. However, Edward testified that he was unaware of the vehicle's condition and value, that he was attempting to collect on a debt, and that he had no intent to harass Kathleen. The magistrate's finding that Edward did not act in bad faith is supported by substantial evidence, and we will not disturb this finding on appeal.

**B. Alternative Transportation**

Kathleen requested that the magistrate order Edward to reimburse her for the expenses she incurred securing alternative transportation while her vehicle was in storage. Kathleen asserts that, as the prevailing party at the exemption hearing, she was entitled to have the magistrate consider her request for discretionary costs. Kathleen claims that her alternate transportation costs were necessary as a result of Edward's decision to contest her claim of exemption.

The prevailing party in a hearing on a claim of exemption may be awarded costs. *See* I.C. § 11-203(b); I.R.C.P. 54(d)(1)(A). Costs awarded as a matter of right include reimbursement for expenses incurred *in the judicial proceedings*, such as witness fees, bond premiums, and preparation of exhibits. I.R.C.P. 54(d)(1)(C). Discretionary costs include

additional items of litigation costs not enumerated in Subparagraph (C) or amounts in excess of what is allowed as a matter of right. I.R.C.P. 54(d)(1)(D). The expenses that Kathleen incurred securing alternate transportation as a result of Edward's seizure of her vehicle are not reimbursable as discretionary costs because they were not related to the court proceedings. A debtor who succeeds in an action for wrongful execution can be awarded damages. *See Nalder v. Crest Corp.*, 93 Idaho 744, 749, 472 P.2d 310, 315 (1970). However, Kathleen did not file a complaint or counterclaim setting forth a cause of action for wrongful execution, which would have entitled her to a damages award if she prevailed. Instead Kathleen asked that costs be awarded to her under Section 11-203(b) and Rule 54(d)(1)(D). Kathleen's alternate transportation expenses could not have been appropriately awarded as discretionary costs and, therefore, the magistrate did not err by failing to consider Kathleen's request that she be reimbursed for those expenses.

### **C. Sheriff's Costs**

The magistrate recognized that, as the party who had the vehicle seized, Edward was responsible for the sheriff's costs. However, the magistrate ordered that those costs be added onto the judgment against Kathleen because Edward levied on her vehicle in good faith. Kathleen argues that Edward was not the prevailing party at the exemption claim hearing and, therefore, the magistrate erred in awarding Edward the costs he incurred by levying on her vehicle.

A debtor who wishes to claim an exemption in property that has been levied upon shall deliver or mail a claim of exemption to the sheriff within fourteen days of service of the documents associated the writ of execution. I.C. § 11-203(a). The creditor then has five days to contest the claim of exemption. I.C. § 11-203(b). If the claim is contested, a hearing must be set within twelve days. *Id.* If the time to contest a claim of exemption expires, or the creditor notifies the sheriff that the claim will not be contested, then the sheriff must release the claimed property to the debtor. I.C. § 11-203(c). In a hearing on a claim of exemption, the prevailing party may be awarded costs in accordance with the Idaho Rules of Civil Procedure. I.C. § 11-203(b).

Fees for the issuance, service, and enforcement of the execution of a small claims judgment must be paid by the party enforcing the judgment and taxed against the unsuccessful party in the same amount and manner as execution issued out of the district court. I.R.C.P. 81(j).

Except when otherwise limited by the Idaho Rules of Civil Procedure, costs shall be awarded as a matter of right to the prevailing party, unless otherwise ordered by the court. I.R.C.P. 54(d)(1)(A). The costs of execution on a judgment that are approved by the court, and fees for the service of the writ of execution upon a judgment are deemed automatically added to the judgment as costs. I.R.C.P. 54(d)(1)(F).

The magistrate ordered that all of the sheriff's fees be added to the judgment against Kathleen without distinguishing between those fees that arose as a result of the execution and those costs that arose because Edward elected to contest Kathleen's claim of exemption. The \$490 added to the judgment represented \$90 for towing and \$20 a day for twenty days of storage. Kathleen claimed an exemption one day after her vehicle was impounded and Edward contested that claim less than one week later. Had Edward not contested Kathleen's claim of exemption, her vehicle would have been in storage for approximately seven days. The towing fee and initial days of storage are costs that would have been incurred even if Edward had not contested the exemption claim. Therefore, those costs were properly added onto the judgment under Rule 54(d)(1)(F), regardless of whether Edward was the prevailing party at the exemption claim hearing.

As a result of Edward's decision to contest Kathleen's exemption claim, Kathleen's vehicle remained in storage for approximately two additional weeks. Idaho statutes do not require creditors to ascertain whether an item of property is exempt prior to having the sheriff seize that property pursuant to a writ of execution, and a debtor whose seized property could qualify for an exemption may elect to not claim that exemption. However, once a debtor claims an exemption, the creditor has a duty to make a reasonable inquiry prior to deciding to contest that claim. *See* I.R.C.P. 11(a)(1).

When a creditor seizes exempt property and then contests a claim of exemption, the debtor is deprived of property that exemption laws were meant to protect from execution. Exemption laws prevent debtors from being completely deprived of the means to support their families, so that they do not become public charges. 31 AM. JUR. 2d *Exemptions* § 3 (2002). Exemptions are designed to secure to the debtor the necessary means of earning a livelihood while doing as little injury as possible to creditors. *Id.* at § 4. Exemption laws strike a balance between the debtor's need to maintain a livelihood through rehabilitation while minimizing any damage to a creditor's ability to collect money. 35 C.J.S. *Exemptions* § 3 (1999).

Allowing creditors to recover exemption-hearing costs, regardless of who is the prevailing party, facilitates abusive tactics to harass debtors and fails to encourage creditors to make a reasonable inspection prior to contesting a debtor's claim of exemption. The need to provide creditors with incentive to conduct a reasonable inquiry prior to contesting an exemption claim is illustrated by the facts of this case. Although the seizure of the vehicle was not in bad faith, the transcript of the exemption hearing suggests that the decision to contest the exemption claim was not well thought out. Apparently Edward contested Kathleen's claim of exemption as a result of his belief that the vehicle was worth more than \$3000. However, Edward failed to realize that the vehicle's sale proceeds would be used to reimburse Kathleen for the amount of the statutory exemption and to pay the execution costs. Edward testified that he had not inspected the vehicle prior to his decision to contest Kathleen's exemption claim. Therefore, Edward was not aware of any obvious conditions, such as body damage, that depreciated the vehicle's value. Edward testified that he never sought to sell Kathleen's vehicle, but rather utilized the seizure in hopes of prompting Kathleen to begin making payments. As a result of Edward's decision to contest Kathleen's exemption claim, Kathleen was deprived of basic transportation, additional sheriff's fees for storage were incurred, and Edward failed to recover any payment toward his judgment.

Depriving a debtor of property that will ultimately be found exempt frustrates the purpose of exemption laws while failing to further the creditor's ability to collect payment towards a debt. Accordingly, we conclude that the magistrate could add those sheriff's fees that arose as a result of Edward's decision to contest Kathleen's claim of exemption to the amount of the judgment only if Edward was the prevailing party in the hearing to determine the claim of exemption.<sup>1</sup>

The sole issue at the hearing was Kathleen's claim that her vehicle was exempt from execution, which Edward had contested. Accordingly, Edward indicated that he did not want to

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<sup>1</sup> The magistrate's finding that Edward acted in good faith does not provide a basis for apportioning his costs to Kathleen. Costs to which the prevailing party would be entitled as a matter of right may be disallowed upon a showing that they were incurred in bad faith. I.R.C.P. 54(d)(1)(C). Here, neither party acted in bad faith. Edward's good faith attempt to collect on his judgment is not a basis under the Idaho Rules of Civil Procedure for assigning the costs he incurred by contesting the exempt status of Kathleen's vehicle, unless Edward was the prevailing party.

execute the writ on Kathleen's vehicle and he did not recover any payment toward satisfaction of his judgment. In contrast, Kathleen obtained the relief she sought at the exemption hearing. The magistrate specifically found that the vehicle was worth less than the statutory exemption and that it should be immediately released to Kathleen. Edward did not prevail at the exemption hearing and he, therefore, was not entitled to a cost award under Section 11-203(b) or Rule 54(d)(1).

Edward is not entitled to the portion of the \$490 that was incurred after he elected to contest the exemption claim. The magistrate erred when it apportioned all of the execution costs to Kathleen, and the district court's order affirming the magistrate in that regard is reversed. On remand, the magistrate is to determine the amount of sheriff's costs that were incurred solely as a result of Edward's decision to contest Kathleen's claim of exemption. Edward is not entitled to reimbursement for that amount because he did not prevail at the exemption hearing.

#### **D. District Court Procedure**

The district court dismissed Kathleen's appeal when it determined that a reply brief had not been timely filed. Kathleen filed a motion to reinstate the appeal and to impose sanctions against Edward. The district court reinstated the appeal when it concluded that the dates in the order governing the method of appeal were conflicting, but did not rule on Kathleen's motion for sanctions.

Kathleen contends that the district court's failure to address her motion to impose sanctions was in error. Kathleen asserts that Edward intentionally misled the district court when he requested that the district court dismiss her intermediate appeal and, therefore, sanctions should have been imposed on Edward pursuant to Idaho Appellate Rule 11.1. A party's signature on documents submitted to the court on appeal must certify that the document is well grounded in fact, is warranted by existing law, and not introduced for any improper purpose. *See* I.A.R. 11.1. When a document is signed in violation of this rule, the court shall impose an appropriate sanction on the person who signed that document. *Id.* In the instant case, the record on appeal does not disclose any document, signed by Edward, which prompted the district court's order dismissing Kathleen's appeal. It is the responsibility of the appellant to provide a

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sufficient record to substantiate his or her claims on appeal. *Powell v. Sellers*, 130 Idaho 122, 127, 937 P.2d 434, 439 (Ct. App. 1997). In the absence of an adequate record on appeal to support the appellant's claims, we will not presume error. *Id.* From the record before us, we can discern no basis on which the district court could have imposed sanctions against Edward.

**E. Costs on Appeal**

Kathleen asserts that she should have been the prevailing party on intermediate appeal and that costs should have been awarded to her as a matter of course pursuant to Idaho Appellate Rule 40. Kathleen also requests costs on the instant appeal. Kathleen has not prevailed on all of the issues she brought to the district court or to us. Kathleen has prevailed only in part, and because she is not the prevailing party on either appeal, she is not entitled to costs under I.A.R. 40.

**III.**

**CONCLUSION**

The magistrate did not err in finding that Edward levied on Kathleen's vehicle in good faith or in declining to order Edward to reimburse Kathleen for alternative transportation costs. We affirm the district court's order affirming the order of the magistrate as to those issues. The magistrate erred when it allocated all of the execution costs to Kathleen. Therefore, we reverse the district court's order, which affirmed the magistrate's order on that finding, and remand this matter to the magistrate for further proceedings consistent with this opinion. The record on appeal is inadequate to address any error in the district court's disposition of Kathleen's motion for sanctions and we decline to address that issue. As each party has prevailed in part, no costs are awarded on appeal.

Judge LANSING and Judge GUTIERREZ, **CONCUR.**